

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF RHODE ISLAND
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105L * * * * * C.A. NO. 00-
5 *
EFRAT UNGAR, by and through *
6 the Administrator of his *
Estate, David Strachman, *
7 et al *
*
8 VS. * SEPTEMBER 23,
2004 *
* 10:00 A.M.
9 THE PALESTINIAN LIBERATION *
ORGANIZATION, et al *
10 *
* * * * * PROVIDENCE, RI

11
12 BEFORE THE HONORABLE RONALD R. LAGUEUX,
13 SENIOR DISTRICT JUDGE
14 (Motion for Stay Pending Appeal)
15

16 E X C E R P T

17 APPEARANCES:

18 FOR THE PLAINTIFFS: DAVID J. STRACHMAN, ESQ.
McIntyre, Tate, Lynch & Holt
19 321 South Main Street
Providence, RI 02903

20 FOR THE DEFENDANTS: DEMING E. SHERMAN, ESQ.
21 Edwards & Angell
2800 Financial Plaza
22 Providence, RI 02903

23 Court Reporter: Karen M. Zinni, RPR-RMR-CRR

24 One Exchange Terrace
Providence, RI 02903

25 Proceeding reported and produced by computer-
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stenography

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1 23 SEPTEMBER 2004 -- 10:00 A.M.

2 BEGINNING OF EXCERPT

3 THE COURT: All right. The Defendants argue
4 essentially that the Court has discretion in
granting a

5 stay in these circumstances and rely on cases,
however,

6 that do not have a monetary judgment and rely on the
7 four-part test that's used for preliminary
injunctions.

8 The Plaintiffs counter by saying that the
First

9 Circuit law is clear on the subject, and it is, that
in

10 a case involving a monetary judgment, the only way
that

11 a defendant can get a stay is to file a supersedeas
12 bond, and the Court can reduce the bond below
the

13 judgment amount in exceptional circumstances.

14 In this case, starting with the reverse,
15 assuming the four-part tests apply, there is
absolutely
16 no reasonable possibility that the Defendants will
get
17 a reversal on appeal. This Court has ruled, I think
at
18 least three times, that the Defendants do not have
19 sovereign immunity, that they are not a foreign
20 sovereign state under the applicable statutes; and
21 that's been confirmed by the conduct of officials
of
22 the Defendants, not only in this case but in
other
23 cases where they admit that they are not a
sovereign
24 state.

25 So that issue is clear, and the Court of
Appeals

3

1 indicated as much but sent the case back after an

2 interlocutory appeal so that the Court could
consider a
3 12(b)(1) motion by the Defendant; and the Court did
4 consider that 12(b)(1) motion and ruled extensively
5 that there is no sovereign immunity in this case.
So I
6 feel confident in saying that the chances of

23 of the case that somehow they shouldn't be liable
for
24 the actions of the Hamas in this dreadful killing.
If
25 that's the position they take, they should have

4

1 defended this case on the merits. They are
defending

2 other cases of a similar nature on the merits.
3 So the Defendants have only themselves to
blame

4 for the position they're now in, and I can't
imagine

5 that the First Circuit Court of Appeals would say
at

6 this point even though you don't have sovereign
7 immunity, you should have an opportunity to defend
this

8 case on the merits. That's been waived a long time
9 ago, and that's really the only argument that the
10 Defendants have at the appellate level. A number
of
11 Courts have ruled the same way.

12 However, I do have some discretion in the

reversal

7 on appeal are between slim and none.

8 In any event, it seems to me that the
Defendants

9 kept changing their position on this matter, and
there

10 is some disingenuous conduct here and some attempts
to

11 delay the ultimate resolution of this case. This
has

12 been true throughout.

13 I advised these Defendants a long time ago
that

14 the proper way to raise the defense of sovereign

15 immunity was to file an Answer and to raise the

16 affirmative defense of sovereign immunity and

then I

17 would have a hearing on that matter. I would
stay

18 discovery until that matter was resolved.

19 Mr. Clark came into court and said
unequivocally

20 that Yasser Arafat did not want to file an Answer in

21 this case and did not want to defend this case on
the

22 merits. Then it is disingenuous to hear from that
side

13 matter; and because of the size of this judgment
14 and

15 the international implications of this judgment,
16 I'm

17 going to require a supersedeas bond in the amount
18 of

19 \$50 million. That's less than half the judgment.

20 So my order specifically is that there will
21 be a

22 stay for one week until September 30th, 2004, at

23 12 noon. If the Defendants file a supersedeas bond
24 of

25 \$50 million approved by the Court, the stay will

continue in effect. If the Defendants do not, the
stay

ends at 12 noon September 30, 2004.

Are there any questions?

MR. SHERMAN: No, your Honor.

THE COURT: That's the order of the Court.

1 Prepare an order, Mr. Strachman.

2 MR. STRACHMAN: Thank

you.

3 (Adjourned)

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C E R T I F I C A T I O N

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10 I, Karen M. Zinni, RPR-RMR-CRR, do
hereby

11 certify that the foregoing pages are a true and
12 accurate transcription of my stenographic notes in
the
13 above-entitled case.

14

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16

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18 Karen M. Zinni, RPR-RMR-CRR

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24 Date

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